

Barry Law Review

Volume 13
Issue 1 *Fall* 2009

Article 5

2009

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Recommended Citation

Szu-Chou Peng and Fu-Jung Wu (2009) "Solutions for Disputes over Intellectual Property Between Taiwan and China – Analyzing Arbitration," *Barry Law Review*: Vol. 13 : Iss. 1 , Article 5.

Available at: <https://lawpublications.barry.edu/barryrev/vol13/iss1/5>

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SOLUTIONS FOR DISPUTES OVER INTELLECTUAL PROPERTY BETWEEN TAIWAN AND CHINA – ANALYZING ARBITRATION

Szu-Chou Peng¹ and Fu-Jung Wu²

ABSTRACT

Increasing business transactions between Taiwan and China have caused international intellectual property disputes to become a new and serious problem for Taiwanese businessmen who have direct and indirect investments in trade. In order to solve this problem, Taiwan and China sequentially set special regulations. For example, section 74 of the *Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area* was enacted by the government of Taiwan to recognize China's civil arbitration procedures.³ On July 23, 2004, China established the *Regulations of the Supreme People's Court Regarding the People's Courts' Recognition of the Civil Judgments Rendered by the Courts in the Taiwan Region* to offer an alternate way to look at arbitration decisions that were already made in Taiwan. Arbitration is one of the current methods of resolving intellectual property disputes between China and Taiwan. Arbitration is the best option for Taiwanese businesses, due to its prompt, professional, flexible, confidential, impartial, economical, harmonious and executable advantages.

I. INTRODUCTION

China is an attractive place for any country or enterprise in the world to operate a business. As business transactions increase, business disputes will also increase. Although employing China's litigation system is one way to solve problems for disputants, litigation usually takes a lot of time and money for an enterprise. Also, an enterprise risks its reputation and any trade secrets that may be disclosed during the litigation. In addition, because of the special political issues between Taiwan and China, the Chinese government does not even allow Taiwanese businesses to apply any international law to solve disputes. Taiwanese businesses face unique challenges in this situation, which become even more complicated when disputes between Chinese and Taiwanese businesses arise.

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3. Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area (promulgated by Presidential Order, July 31, 1992, effective Sept. 18, 1992), § 74, (P.R.C.), translated in <http://www.mac.gov.tw/english/english/law/law1.pdf> [hereinafter Act Governing Relations].

Taiwan's and China's governments, also aware of this situation, enacted special regulations to recognize each other's judicial injunctions and adjudication decisions.⁴ For instance, China established the *Regulations of the Supreme People's Court Regarding the People's Courts' Recognition of the Civil Judgments Rendered by the Courts in Taiwan Region* to legally recognize the execution of Taiwan's civil procedures in China.⁵ On July 23, 2004, the Intermediary People's Court of Xiamen, China made the decision to recognize an award rendered by the Arbitration Association of the Republic of China, Taiwan in accordance with this regulation.⁶ This has been an important step for Taiwan and China to recognize and execute each other's adjudications and injunctions. By doing so, once a dispute was solved by a Taiwanese court, disputants did not need to file the same suit again in China.

Although this judicial recognition process saves disputants more time than litigation would take in China, it is still not efficient enough for fast-paced enterprises, especially those involved in intellectual property disputes. Most intellectual property disputes involve an enterprise's product reputation and the newest technology. Enterprises want to solve these disputes as soon as possible because the longer they wait then the more damage is done to their reputations or their products' marketability. In order to avoid the disadvantages of slow litigation, arbitration offers a way to solve these types of important issues in a timely manner.

Considering arbitration as a solution to the transactional difficulties between Taiwan and China, this article will explain the context of the problem; compare the past and the present arbitration systems in China; list characteristics of the current arbitration system in China; and analyze the unique advantages of arbitration for Taiwanese businesses in intellectual property disputes. The article concludes that key characteristics of China's new arbitration system create a lot of advantages for resolving intellectual property disputes between China and Taiwan that are unavailable through traditional litigation in China.

II. THE ARBITRATION SYSTEM IN CHINA

A. Background

In 1978, the Third Plenary Session of the Eleventh Central Committee of the Communist Party of China ("C.P.C.") was held.⁷ One of its purposes was to get rid

4. *Id.* Taiwan enacted the Act Governing Relations between Peoples of the Taiwan Area and the Mainland Area. *Id.* Section 74 of this act provides for the recognition of civil arbitration in mainland China. *Id.*

5. See Baker & McKenzie, *China Dispute Resolution Client Alert*, Sept. 2009, available at http://www.bakernet.com/NR/rdonlyres/7B9C6D0C-5E87-4523-B3AB-01CA2A089F35/0/china_awardsbetweentaiwanmainland_ca_sep09.pdf; Regulations Concerning Recognition by People's Courts of Civil Judgments of Taiwan Courts (promulgated by Supreme People's Court of the Republic of China, May 26, 1998) (P.R.C.), available at <http://en.chinacourt.org/news/?location=04000000000>.

6. SZU-CHOU PENG, *THE PROTECTION OF PROPERTY RIGHTS IN CHINA: A CASE STUDY ON INFRINGEMENT PATENT*, 429 (2007).

7. DANIEL C.K. CHOW & THOMAS J. SCHOENBAUM, *INTERNATIONAL BUSINESS TRANSACTION* 521 (Aspen Publishers 2005).

of undesirable traditions.⁸ A reform and opening-up policy, partially adopted from capitalism, was passed to endorse some free markets and private enterprises within an overall framework of socialism.⁹ After 1978, China was no longer a traditional communist state but a special socialist state.¹⁰ Therefore, the Chinese government was able to provide a safe and creditable economic environment to attract more foreign businesses. Substantial incentives now exist for international enterprises to invest in China, which includes entry into a large domestic marketplace and the availability of low cost laborers. Intellectual property-related products, which are imported to China, are becoming more intricate and technologically wide-ranging than in the recent past. Thus, it is important to find a better way to protect intellectual property rights and products in China. Previous Chinese law was not enough to protect such complicated intellectual property rights due to a number of factors including: the judge's inability to understand the intricacies of the technology; the fast paced need for decisions; and the short-comings in the laws which could not keep up with the changing technology. Finding a way to solve these complex intellectual property disputes with speed and accuracy is expected by most international businessmen when the disputed subject matters have huge market values. In order to fulfill these expectations, China amended its arbitration law in accordance with international standards.

In the past, China's arbitration system was like that of most East European countries, such as Yugoslavia, the Czech Republic, and Poland. As in China, these countries have two separate systems to applying arbitration. The systems are divided into internal arbitration and foreign affairs arbitration. These separated arbitration systems make the arbitration process complicated and are not suitable for international enterprises that need quick resolutions. Given the complicated and unfamiliar litigation system, the arduous process of resolving international business disputes in China has soured the environment causing enterprises to hesitate when investing more money. China could not be bound by these conventions and needed to make some changes in accordance with internationalization. Therefore, on August 31, 1994, China's Ninth Session of the Standing Committee of the Eighth National People's Congress passed and promulgated the *Arbitration Law of the People's Republic of China*.¹¹ The China Arbitration Act ("CAA") was executed on September 1, 1995.¹² The CAA has many innovative characteristics and represents a breakthrough when comparing it with the past system. The next part of this article will summarize the current arbitration law of the People's Republic of China and point out its main characteristics.

8. *Id.*

9. *Id.*

10. *Id.*

11. China Arbitration Act (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 31, 1994, effective Sept. 1, 1995) (P.R.C.), *translated in* <http://www.chinanpo.gov.cn/web/showBulletin.do?id=16143&dictionid=1201> (last visited Oct. 23, 2009) [hereinafter CAA].

12. *Id.*

B. Characteristics of the CAA

The CAA is the current arbitration law in China and it was amended in accord with World Trade Organization's ("WTO") international standards.¹³ The goal of the CAA is to get rid of many inconvenient regulations for disputants trying to apply arbitration in their disputes.¹⁴ The current CAA has some features that the past arbitration system did not have, such as a unified system, more powerful jurisdiction, more autonomy for disputants and united jurisdiction.¹⁵

Compared to the past systems, the CAA is better in effect for international enterprises. In regards to civil procedure standards in China, a case can take more than six months from the inception of prosecution to receive a judgment. If parties appeal the case it might even last for several years. Contrasting these norms with the simplicity and speed of arbitration causes more and more businesses to choose arbitration. The first characteristic of the CAA is to provide a prompt and impartial arbitration procedure.¹⁶ Article 1 of the CAA states the following: "This Law is formulated in order to ensure that economic disputes shall be impartially and promptly arbitrated, to protect the legitimate rights and interests of the relevant parties and to guarantee the healthy development of the socialist market economy."¹⁷ Article 7 states, "[D]isputes shall be fairly and reasonably settled by arbitration on the basis of facts and in accordance with the relevant provisions of law."¹⁸ This arbitration procedure is regulated under Chapter IV and there are thirty-seven articles in three sections: Section I -- Application and Acceptance for Arbitration; Section II -- Composition of the Arbitration Tribunal; and Section III -- Hearing and Arbitral Awards.¹⁹ The purpose of the CAA and its regulations was to improve the traditional image of Chinese litigation as being slow and constantly delayed.²⁰

The CAA arbitration system adopts the continuous trial approach in order to ensure the purpose of arbitration as a simple and timely procedure.²¹ There are similar procedures both in Taiwan and the World Intellectual Property Organization ("WIPO").²² In the Arbitration Law of Taiwan, Article 21 has a regulated timeline to expedite the arbitration process.²³ It states as follows:

13. CAA, *supra* note 11, at art. 79.

14. *Id.* at art. 1.

15. *See* CAA, *supra* note 11.

16. *Id.* at art. 1.

17. *Id.*

18. *Id.* at art. 7.

19. *Id.* at arts. 21-57.

20. CAA, *supra* note 11, at art. 1.

21. *Id.*

22. Compare WIPO ARBITRATION RULES, available at <http://www.wipo.int/amc/en/arbitration/rules/index.html>, with THE ARBITRATION LAW OF ROC, available at <http://www.arbitration.org.tw/english/index-8-2.html>.

23. THE ARBITRATION LAW OF ROC at art. 21, available at <http://www.arbitration.org.tw/english/index-8-2.html>.

In the absence of any stipulation in the arbitration agreement as to how the arbitration is to be conducted, the arbitral tribunal shall, within ten days upon receipt of notice of the [final arbitral] appointment, determine the place of arbitration as well as the time and date for the hearing, and shall notify both parties thereof. The arbitral tribunal shall render an arbitral award within six months [of commencement of the arbitration]. However, the arbitral tribunal may extend [the decision period] an additional three months if the circumstances so require.²⁴

The WIPO has similar regulations to accelerate the process of arbitration.²⁵ Being a member of WIPO, the Chinese government tries to make its arbitration law in accordance with the WIPO's requirements.

Although saving time is one of the advantages when employing arbitration instead of litigation, having impartial processes and awards are also significant factors to be considered.²⁶ In order to have just decisions, Chinese arbitration associations do not follow the laws established by the Chinese government in the past, but they formulate arbitration rules in accordance with the CAA and domestic civil procedure.²⁷ In addition, Article 75 of the CAA states that, "[T]he arbitration Commission may formulate provisional arbitration rules in accordance with this Law and the relevant provisions of the Civil Procedure Law before the formulation of the arbitration rules by the China Arbitration Association."²⁸ For instance, the China International Economic and Trade Arbitration Commission ("CIETAC") is the key to a permanent arbitration institution in China. The goal of the CIETAC is to cooperate with the CAA to resolve trade and economic disputes independently and impartially; additionally, party autonomy is a good illustration that arbitration offers a more flexible resolution than the often rigid procedure and timetables of the courts.²⁹

24. *Id.*

25. WIPO Arbitration Rules at art. 4, available at <http://www.wipo.int/amc/en/arbitration/rules/index.html>.

26. Richard Chalk & Peter Yuen, Resolving Disputes in China Through Arbitration (June 4, 2007), <http://www.freshfields.com/publications/pdfs/2007/june4/18877.pdf>.

27. CAA, *supra* note 11, at art. 15. Article 15:

The China Arbitration Association is a social organization with the status of a legal person. Arbitration commissions are members of the China Arbitration Association. The Articles of Association of the China Arbitration Association shall be formulated by the national general meeting of the members.

The China Arbitration Association is an organization in charge of self-regulation of the arbitration commissions. It shall conduct supervision over the conduct (any breach of discipline) of the arbitration commissions and their members and arbitrators in accordance with its articles of association.

The China Arbitration Association shall formulate Arbitration Rules in accordance with this Law and the Civil Procedure Law.

Id.

28. *Id.*

29. China Int'l Econ. & Trade Comm'n, <http://www.sccietac.org/cietac/en/content/content.jsp?id=861> (Party autonomy is one advantage of arbitration.).

The second characteristic of the CAA is integration of the arbitration system and China's regulation.³⁰ In the past, China had a two branch system of internal arbitration and foreign affairs arbitration.³¹ Under the old system it was impossible to find a uniform law to deal with arbitration activities taking place in China.³² Which law or regulation should be followed by the arbitrators was decided by the government with no predictable structure. Also, the government could solely decide whether or not disputes could even be solved by arbitration. Often under this system, even when disputes were solved, results were unsatisfying due to the unpredictable and unfair structure of the law as manipulated by the government.

The predictability of arbitration was greatly improved with the passing of the CAA. According to Article 2 of the CAA, "[D]isputes over contracts and disputes over property rights and interests between citizens, legal persons and other organizations as equal subjects of law may be submitted to arbitration."³³ The government no longer held the only key to resolution through arbitration. After the CAA, the two-pronged system of arbitration law was no longer considered as a valid procedure and any enterprise could apply arbitration to solve a dispute at anytime. This was a significant change and made most international enterprises more willing to apply arbitration when attempting to solve disputes.³⁴

The third characteristic of the CAA is to amplify the legal effect of jurisdiction.³⁵ The hierarchy of laws in China is important in determining the legal effects of the law. There are five hierarchical stages in China's legal system.³⁶ The highest and most powerful stage is occupied by China's Constitution; second, the laws that are set by the National People's Congress; third, the laws created by the Standing Committee of the National People's Congress; fourth, the laws and regulations which are established by the State Council of the People's Republic of China; and finally, the decrees and regulations which are promulgated by the administrations of the State Council of the People's Republic of China.³⁷ In the past, internal arbitration applied to laws or regulations which were set by the administrations of the State Council of the People's Republic of China³⁸, whereas foreign affairs arbitration applied the *China International Economic and Trade Commission Arbitration Rules (CIETAC Arbitration Rule)* and the *China Maritime Commission Arbitration Rules* which were promulgated by the CIETAC. Due to the past, arbitration laws

30. CAA, *supra* note 11, at arts. 7-9.

31. Li Hu, Introduction to Commercial Arbitration in China, http://www.softic.or.jp/symposium/open_materials/11th/en/LiHu.pdf.

32. *Id.*

33. CAA, *supra* note 11, at art. 2.

34. According to the statistics released from the CIETAC, the numbers of cases including foreign-related and domestic which had submitted to the CIETAC have been increased after the CAA was enacted. CIETAC, available at <http://www.cietac.org/index.cms> (follow "About Us" hyperlink; then follow "Statistics" hyperlink).

35. CAA, *supra* note 11, at arts. 6 & 21.

36. Guiguo Wang & Priscilla M. F. Leung, *One Country, Two Systems: Theory into Practice*, 7 PAC. RIM L. & POL'Y 279, 299-300 (1998).

37. *Id.*

38. The China International Economic and Trade Commission Arbitration Rule was revised and adopted by China Council for the Promotion of International Trade/China Chamber of International Commerce, available at <http://www.sccietac.org/cietac/en/content/content.jsp?id=873>.

were established by the bottom tier administrations; thus, when executing an arbitration award, it had to be examined whether the award was contrary to the hierarchy of laws.³⁹

However, the CAA was specifically created by the Standing Committee of the National People's Congress leaving no doubt that the CAA, as arbitration law, has much stronger jurisdiction than past regulations. This is also great news for enterprises when they wish to apply arbitration in China. This change represents that arbitration will be encouraged among international enterprises and that awards will be promptly executed.

The fourth characteristic of the CAA is to raise participant autonomy to the standard of other international arbitration laws.⁴⁰ The purpose of arbitration is to offer a private and convenient way for disputing participants to resolve their matter in a "win-win" situation. In the past, Chinese arbitration law had too many limitations for participation by disputants. For example, although parties had the right to appoint an arbitrator, they could only select from the list of arbitrators which was provided by the arbitration commissions.⁴¹ Yet, the appointed arbitrators from the list were not necessarily trusted by the disputants or just to them. Also, it was difficult to execute an arbitration award in the past; if one of the disputants did not satisfy the arbitration result, he still could bring the case to people's court without the other party's agreement.⁴² These aforementioned concepts are against the principle of autonomy in private law.

The CAA disposes of these disadvantages and illustrates the autonomy principle – the parties adopting arbitration for dispute settlement reach an arbitration agreement on a mutual and voluntary basis.⁴³ An arbitration commission shall not accept an application for arbitration which is submitted by one of the parties in the absence of an arbitration agreement.⁴⁴ Article 31 also provides another good demonstration of how the new Chinese arbitration law updates the autonomy principle since it states the following:

If the parties agree to form an arbitration tribunal comprising three arbitrators, each party shall select or authorize the chairmen of the arbitration commission to appoint one arbitrator. The third arbitrator shall be selected jointly by the parties or be nominated by the chairman of the arbitration commission in accordance with a joint

39. CIETAC Arbitration Rules, art. 4(2), available at <http://www.cietac.org/index.cms> (follow "Rules" hyperlink).

40. CAA, *supra* note 11, at art. 1.

41. Article 21(1) of the CIETAC Arbitration Rules states "The parties shall appoint arbitrations from the Panel of Arbitrators provided by the CIETAC." CIETAC Arbitration Rules, art. 21(1), available at <http://www.cietac.org/index.cms> (follow "Rules" hyperlink).

42. Regulations of the People's Republic of China on the Arbitration of Disputes over Economic Contracts, art. 33 (effective Aug. 22, 1983) (P.R.C.), available at <http://www.asianlii.org/cn/legis/cen/laws/rotaodoc656/> [hereinafter Regulations of Disputes over Economic Contracts].

43. CAA, *supra* note 11, at art. 4.

44. *Id.*

mandate given by the parties. The third arbitrator shall be the presiding arbitrator.⁴⁵

It is clear that the CAA gives disputants more rights when applying for arbitration in China.

The fifth characteristic of the CAA is to expand the protective scope of arbitration.⁴⁶ In the past, *Technology Contract Law of the RPC Regulations for the Implementation*, which was abolished on October 6, 2001, was the main internal arbitration sector that was required to follow.⁴⁷ However, this provision did not clearly regulate what kinds of disputes could apply to the arbitration process. Although one of the disputing parties could apply for arbitration, whether a case would be accepted or not was unpredictable. This ambiguity steered businesses away from applying for arbitration.

Currently under the CAA, the disputants can apply for arbitration only if both of them have agreed; thus, disputants will not have to worry about whether their dispute will be accepted to arbitration or not.⁴⁸ The CAA expands the protective scope of arbitration to any dispute with the mutual agreement of the parties except in issues involving the public welfare.⁴⁹ Article 77 states that, "Arbitration of labor disputes and disputes over contracts for undertaking agricultural projects within agricultural collective economic organizations shall be separately stipulated."⁵⁰ Article 3 states that, "The following disputes shall not be submitted to arbitration: (1) disputes over marriage, adoption, guardianship, child maintenance and inheritance; and (2) administrative disputes falling within the jurisdiction of the relevant administrative organs according to law."⁵¹ The law excludes the former disputes from being solved in arbitration since they might go against the hierarchy of laws.⁵² Furthermore, private parties should not have the right to decide results independently. In addition, administrative disputes are related to public law and private parties should follow specific administrative litigation requirements in order to solve their disputes. The CAA is mainly established to solve "economic disputes," which are defined in Article 2 as disputes over contracts, property rights, and interests.⁵³

The sixth characteristic of the CAA is to promote voluntary and exclusive arbitration agreements.⁵⁴ *Arbitration of Disputes over Technical Contracts*, *Arbitration of Disputes over Copyright*, and *Arbitration of Disputes over Economic Contracts* were the main regulations for internal arbitration in the past, which brought consi-

45. *Id.* at art. 31.

46. *Id.* at ch. 3.

47. This regulation was replaced by Regulations of Disputes over Economic Contracts, *supra* note 42.

48. CAA, *supra* note 11, at arts. 16-20.

49. *Id.* at arts. 2-4.

50. *Id.* at art. 77.

51. *Id.* at art. 3.

52. *Id.* at art. 9.

53. *Id.* at art. 2. Article 2: "Disputes over contracts and disputes over property rights and interests between citizens, legal persons and other organizations as equal subjects of law may be submitted to arbitration." *Id.*

54. *Id.* at ch. 1.

derable positive results in arbitration.⁵⁵ This was the main motivation to push the Chinese government to establish a unified arbitration system implementing the voluntary principle. Although the CAA openly adopts the voluntary principle, whereby disputants can reach a voluntary agreement, there are some limitations.⁵⁶ For instance, disputing parties must provide a written agreement to apply arbitration.⁵⁷ During arbitration, disputants can still form their own settlement agreement; however, they must do so before the commission of arbitration makes the final decision.⁵⁸ These limitations show that the autonomy of the CAA still has room to improve even though individual autonomy has increased.

The seventh characteristic of the CAA is the priority to enforce an arbitration award.⁵⁹ Although the Chinese government amended its arbitration law in accordance with international standards, causing people to execute the law in an efficient way is another problem. In order to make people adequately employ the current arbitration system, the Chinese government reinforced the legal effect of arbitration by giving the arbitration system priority over the trial system.⁶⁰ Therefore, when an arbitral award is submitted, there is no chance to appeal.⁶¹ The court cannot overrule an arbitration commission's decision because an award is final and disputants should be bound according to Article 5 of the CAA.⁶²

Before the CAA, the *Law of the People's Republic of China on Economic Contracts Involving Foreign Interest, Technology Contract Law, and Copyright Law* were important laws that were followed for internal arbitration.⁶³ Under these laws, disputants had the right to choose arbitration or the trial process to solve their disputes.⁶⁴ The CAA was amended to encourage disputants to apply arbitration rather than litigation.⁶⁵

Economic Contract Law of the People's Republic of China was the first of the regulations which was enacted in 1982 to respect the decision of arbitrators.⁶⁶ Once the commissions made a decision, both participating parties were effectively

55. Regulations of Disputes over Economic Contracts, *supra* note 42.

56. CAA, *supra* note 11, at art. 4. Article 4: "The parties adopting arbitration for dispute settlement shall reach an arbitration agreement on a mutually voluntary basis. An arbitration commission shall not accept an application for arbitration submitted by one of the parties in the absence of an arbitration agreement." *Id.*

57. *Id.*

58. *Id.* at arts. 8 & 51.

59. *Id.* at art. 54.

60. *Id.* at art. 5.

61. See Richard Chalk & Peter Yuen, Resolving Disputes in China Through Arbitration, June 4, 2007, at 22, <http://www.freshfields.com/publications/pdfs/2007/june4/18877.pdf>.

62. CAA, *supra* note 11, at art. 5. Article 5: "A people's court shall not accept an action initiated by one of the parties if the parties have concluded an arbitration agreement, unless the arbitration agreement is invalid." *Id.*

63. Law of the Peoples Republic of China on Economic Contracts involving Foreign Interest (promulgated by Order No. 22 of the President of the Peoples Republic of China on Mar. 21, 1985, effective as of July 1, 1985) (P.R.C.), *available at* <http://www.jus.uio.no/lm/china.economic.contracts.involving.foreign.interests.law.1985/portrait> [hereinafter Law on Economic Contracts Involving Foreign Interest].

64. *Id.* at art. 31.

65. According to the statistics released from the CIETAC, the numbers of cases which had resolved by the CIETAC have been increased after the CAA has enacted. CIETAC, *supra* note 34.

66. THE ECONOMIC CONTRACT LAW OF THE PEOPLE'S REPUBLIC OF CHINA art. 128 (Adopted at the 4th Session of the Fifth National People's Congress on December 13, 1981, effective as of July 1, 1982) (P.R.C.), *available at* <http://www.cscc.gov.cn/n575458/n4001948/n4002075/n4002315/4060252.html>.

barred from returning to an arbitration forum with the same matter.⁶⁷ The CAA also states this rule in section one of Article 9 as follows:

The single ruling system shall be applied in arbitration. The arbitration commission shall not accept any application for arbitration, nor shall a people's court accept any action submitted by the party in respect of the same dispute after an arbitration award has already been given in relation to the matter.⁶⁸

The eighth characteristic of the CAA is the united jurisdiction.⁶⁹ In either the trial system or past arbitration system, jurisdiction was limited by certain factors, which included the amount of money involved in the dispute and/or the place where the contracts were implemented.⁷⁰ For example, in the past, the *Regulations of the People's Republic of China on the Arbitration of Disputes over Economic Contracts* stated that disputes over economic contracts shall be applied jurisdiction *in rem*.⁷¹ Article 9 regulates the jurisdiction *in rem* as follows:

Cases of disputes over economic contracts shall be handled by arbitration organizations in the place where the contracts are implemented or signed. If there is difficulty in execution, it may be referred to arbitration organizations in the places of the accused.⁷²

Article 10 is about the district jurisdiction and whether disputes over economic contracts shall be handled by arbitration organization of countries and city districts principally.⁷³ However, if there is a monetary dispute exceeding \$500,000 RMB (Renminbi⁷⁴), a higher arbitration organization will be required.⁷⁵ As illustrated by

67. According to the guideline of the China International Economic and Trade Arbitration Commission, it shows that "The arbitration award is final and binding upon both parties. Neither party may bring suite before a law court or make a request to any other organization for revising the arbitral award." CIETAC, <http://www.sccietac.org/cietac/en/content/content.jsp?id=865>.

68. CAA, *supra* note 11, at art. 9.

69. *Id.* at art. 6.

70. *Id.*

71. Regulations of Disputes over Economic Contracts, *supra* note 42, at art. 9.

72. *Id.* at art. 9.

73. *Id.* at art. 10.

74. Renminbi is Chinese Yuan which is issued by the People's Bank of China. US 1 dollar = RMB 6.834 Yuan, available at <http://www.en.wikipedia.org/wiki/Renminbi> (last visited Oct. 17, 2009).

75. Regulations of Disputes over Economic Contracts, *supra* note 42, at art. 10. Article 10:

Disputes over economic contracts shall be handled by arbitration organizations of counties (cities) and city districts, with the exception of the following cases:

(1) Cases that have a big influence or involve a sum of over 500,000 to 5 million Yuan shall be handled by arbitration organizations of cities under the direct administration of provinces, or prefectures and autonomous prefectures;

(2) Major economic disputes of great impact or involving a sum of 5 million to 10 million Yuan shall be handled by provincial, municipal, or autonomous regional arbitration organizations;

the examples above, the past arbitration system contained some seriously complex jurisdictional rules. The CAA does not divide disputes into different jurisdictions by these two aforementioned methods.⁷⁶ Article 6 of the CAA clarifies that the limited jurisdiction and the territory jurisdiction should not be applied to arbitration because an arbitration commission is specifically selected by party agreement.⁷⁷

The ninth characteristic of the CAA is that the people's courts have the right to monitor arbitration awards.⁷⁸ The CAA adopts the arbitration or trial system.⁷⁹ Thus, once disputants choose arbitration instead of litigation to resolve disputes, then courts have no right to become involved in the arbitration procedure.⁸⁰ However, the awards are still monitored and protected by the courts.⁸¹ If a court finds out that an arbitration award is inequitable to execute, then a court has the right either not to enforce the award⁸² or to cancel the award.⁸³ If the award is canceled, then Chapter V of the CAA has more detailed regulations to protect the rights of the parties.⁸⁴ This characteristic makes sure the disputants have just arbitration awards, which are only monitored by, but not overly interfered with by, the people's courts or the Chinese government.

(3) Disputes over economic contracts that will have great impact nationwide or disputes between provinces municipalities and autonomous regions or between central departments and involve a sum of above 10 million Yuan shall be handled by the arbitration board of the State Administration for Industry and Commerce.

Id.

76. See generally CAA, *supra* note 11.

77. CAA, *supra* note 11, at art. 6.

78. *Id.* at ch. 6 arts. 62-64.

79. *Id.* at art. 9.

80. *Id.*

81. *Id.*

82. *Id.* at art. 63. Article 63:

A people's court shall, after examination and verification by its collegiate bench, rule not to enforce an award if the party against whom an application for enforcement is made provides evidence proving that the award involves one of the circumstances prescribed in Clause 2, Article 217 of the Civil Procedure Law.

Id.

83. *Id.* at art. 64. Article 64:

If one party applies for enforcement of an award while the other party applies for cancellation of the award, the people's court receiving such application shall rule to suspend enforcement of the award.

If a people's court rules to cancel an award, it shall rule to terminate enforcement. If the people's court overrules the application for cancellation of an award, it shall rule to resume enforcement.

Id.

84. *Id.* at ch. V. Articles 58-61 have the detailed regulations about application for cancellation of an award. *Id.* at arts. 58-61.

III. STRUCTURE OF THE CHINESE ARBITRATION ORGANIZATIONS

There are two types of arbitration organizations under the current system and they are arbitration associations and arbitration commissions. The China Arbitration Association is a social organization which is regarded as an artificial person having a legal identity in which all of the arbitration commissions are members.⁸⁵ The Association is in charge of regulating the arbitration commissions and supervises the conduct of the arbitration commissions and their members in accordance with its Articles of Association.⁸⁶ Currently, the CIETAC and China Maritime Arbitration Commission ("CMAC") are the leading arbitration associations in China.⁸⁷

To establish the independent arbitration systems, China does not adopt the traditional way of dividing each by level of administrative divisions. Article 10 states the following:

[A]rbitration commissions may be established in the municipalities directly under the Central Government, in the municipalities where the people's governments of provinces and autonomous regions are located or, if necessary, in other cities divided into districts. Arbitration commissions shall not be established at each level of the administrative divisions.⁸⁸

The purpose of the current arbitration system is to establish various independent arbitration commissions in order to avoid arbitration commissions which are controlled by the same administrators.⁸⁹

Although each arbitration commission is independent, there are some regulations which must be followed in order to ensure uniform arbitration procedures. Article 11 contains further requirements for arbitration commissions, which shall fulfill the following conditions: (1) each commission must have its own name, domicile and Article of Association; (2) it must possess the necessary property; (3) it

85. CAA, *supra* note 11, at art. 15. Article 15:

The China Arbitration Association is a social organization with the status of a legal person. Arbitration commissions are members of the China Arbitration Association. The Articles of Association of the China Arbitration Association shall be formulated by the national general meeting of the members.

The China Arbitration Association is an organization in charge of self-regulation of the arbitration commissions. It shall conduct supervision over the conduct (any breach of discipline) of the arbitration commissions and their members and arbitrators in accordance with its articles of association.

The China Arbitration Association shall formulate Arbitration Rules in accordance with this Law and the Civil Procedure Law.

Id.

86. *Id.*

87. See CHINA MARITIME ARBITRATION COMMISSION available at <http://www.cmac-sh.org/en/home.asp>.

88. CAA, *supra* note 11, at art. 10.

89. *Id.*

must have its own members; and (4) it must have arbitrators for appointment.⁹⁰ Arbitration commissions should also have a chairman, two to four vice-chairmen and seven to eleven members who have working experience and specialize in law, economics and trade.⁹¹

These regulations ensure that the structure of the arbitration commission is complete and that each commission is equipped to provide fair arbitration for disputing parties.

IV. REMEDY IN SYSTEM OF DISPUTES OVER INTELLECTUAL PROPERTY RIGHTS FOR TAIWANESE BUSINESSES

Due to the close business trade with China, disputes over intellectual property rights cannot be avoided. As previously mentioned, there had been no official regulatory solution between Taiwan and China because of the unique political situation. There was an awkward situation in which the Chinese government did not recognize Taiwan as an independent country; furthermore, China did not allow Taiwanese businessmen to apply Chinese laws directly when having disputes.⁹² Until recently, when Taiwanese businesses had any conflicts in China, the businesses could only apply special regulations, such as the *Law of the People's Republic of China on Protection of Investment by Compatriots from Taiwan*.⁹³ Article 14 stipulates that when a dispute occurs, then the region where the dispute occurs has jurisdiction by stating as follows:

As for any investment-related dispute arising between an investor from Taiwan and a corporation, "enterprise," other economic organization or individual of another province, "autonomous region or municipality directly under the Central Government," the parties concerned may settle it through consultation or mediation.⁹⁴

Although these are the legal regulations only for Taiwanese businessmen, there are still other laws and regulations that can be applied when Taiwan or other countries' businesses face disputes in China, such as the *Law of the People's Republic*

90. *Id.* at art. 11.

91. *Id.* at art. 12. Article 12:

An arbitration commission shall comprise a chairman, two to four vice-chairmen and seven to eleven members. The chairman, vice-chairmen and members of an arbitration commission must be persons specialized in law, economics and trade and persons who have actual working experience. The number of specialists in law, economics and trade shall not be less than two-thirds of the members of an arbitration association.

Id.

92. See Taiwan – Wikipedia, http://en.wikipedia.org/wiki/Taiwan#Modern_democratic_era (stating that the People's Republic of China claims and considers itself the successor of Taiwan).

93. The Law of the People's Republic of China on Protection of Investment by Compatriots from Taiwan (promulgated by Presidential Order, Mar. 5, 1994) (P.R.C.), available at http://www.fdi.gov.cn/pub/FDI_EN/Laws/GeneralLawsandRegulations/BasicLaws/P020060620319234841241.pdf.

94. *Id.* at art. 14.

of China on Economic Contracts Involving Foreign Interest.⁹⁵ According to these regulations, there are at least four methods of attaining a remedy for disputes in China: negotiation, conciliation (known as mediation), arbitration and litigation.⁹⁶

Among these four remedies, negotiation and conciliation are commonly used in economic-related regulations in China. Usually, the parties will choose arbitration or litigation unless one of the disputing parties wants to solve a dispute by negotiation or conciliation or if a party is satisfied with the decision which was made through negotiation and conciliation. The reason that negotiation and conciliation attracts most of the parties in disputes is because there are no special requirements for the timing, location or formulation of the remedy.⁹⁷ The disputing parties can save a lot of time and money if they choose to solve disputes while avoiding interference from a third party or the government. Some of the most important benefits on negotiation and conciliation are that any business or trade secrets will not be disclosed, and the reputation of the corporation will not be impacted through these private procedures. These two remedies are the most efficient methods since they “value harmony most⁹⁸,” which is a significant concern in Chinese culture. If there are no complex polarizing issues in a dispute, then negotiation and conciliation are good ways to resolve them.

However, a decision stemming from negotiation and conciliation does not have any binding legal authority.⁹⁹ Compared with the liberty and the flexibility of negotiation and conciliation, arbitration and litigation have more powerful legal effects.¹⁰⁰ However, there are also huge disparities in the complexity of the procedures in both arbitration and litigation. Arbitration has several advantages that litigation does not have. The first advantage is promptness. This is because time is a key factor to be concerned with because the longer the dispute exists, the more damage it may cause. This applies especially to those disputes over intellectual property in China. The value of intellectual property rights decreases over time. If every dispute had to be litigated through a long, complex and nearly indecipherable process, then most resolution attempts would be bitter and, ultimately, meaningless for the parties. The loss of value for intellectual property on the market is an excellent motivation for parties to pursue alternate remedies to resolve disputes. The phrase “justice delayed is justice denied” can suitably explain this situation.

The second advantage is the specialization of arbitrators.¹⁰¹ Again, most disputes that Taiwanese businesses are involved in are related to industrial and tech-

95. Law on Economic Contracts Involving Foreign Interest, *supra* note 63, at arts. 37 & 38; Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, arts. 14 & 26, (P.R.C.), available at <http://www.chinaembassy.org.in/eng/jjmy/t61305.htm> (last visited Oct. 17, 2009); Provisions of the State Council Concerning the Encouragement of Investments by Compatriots from Taiwan, art. 20, available at <http://www.asianlii.org/cn/legis/cen/laws/potscteoibcf1016/> (last visited Oct. 17, 2009) [hereinafter Provisions Concerning Investments].

96. *Id.*

97. Law on Economic Contracts Involving Foreign Interest, *supra* note 63.

98. Arthur Wineburg, *Jurisprudence in Asia: Enforcing Intellectual Property Rights*, 5 U. BAL. INTELL. PROP. L.J. 25, 27 (Fall 1996/Spring 1997).

99. *Id.*

100. *Id.*

101. CAA, *supra* note 11, at art. 13.

nological-related issues. However, most of the judges in China do not have adequate backgrounds to understand the intricacies of each specialized industry. Hence, litigating in China will be a disadvantage for industry or technology-related businesses from Taiwan. Usually, when a Chinese court accepts these types of cases, the court will appoint other special institutions, such as the State Administration for Industry and Commerce (“SAIC”), to examine and determine what kinds of issues are involved and to provide their professional opinions to the court. Compared with the process of litigation, arbitration can save a lot of time since arbitration committees are composed of members who have the requisite backgrounds needed to understand the disputes.¹⁰² The Arbitration and Mediation Center of the WIPO promulgated the *Explanatory and Guidance Notes* to describe the requirements for arbitrators in various fields.¹⁰³ Disputants need only explain the disputed issues and the type of industry in order to find suitable arbitrators. Additionally, disputing parties have the right to appoint arbitrators; thus, they are able to search for suitable arbitrators from their pertinent fields.¹⁰⁴ The important thing is that most arbitrators are experienced and familiar with the business’s specific situation. In order to solve disputes more efficiently, arbitrators consider not only the legal issues at stake, but also the business and other technological issues that come into play.

The third advantage is the flexibility of the arbitration process. Disputants have no right to change the process of civil procedure in litigation. On the contrary, any procedure, law or language can be applied by the disputants’ agreement to arbitration based on the autonomy principle as long as arbitration is not contrary to the public order and good customs principle.¹⁰⁵ Choosing a location for arbitration is another example of flexibility for disputants because they can find a suitable location to provide evidence, to find arbitrators and to submit documents easily.¹⁰⁶ An arbitration commission also has the right to pick the location in different situations. Disputants can ask an arbitration commission to hold the accommodation or cancel the procedure of arbitration any time before a decision is rendered. After cancelling arbitration, disputants can still apply reconciliation and ask that the arbitration commission not interfere.¹⁰⁷ It is clear that the purpose of the arbitration system is to save time and money for disputing parties. If the parties have the agreement for arbitration before or after the dispute, then the procedure of arbitration definitely will be quicker than litigation since there are too many uncertain factors which have delaying affects on the litigation process.

The fourth advantage is confidentiality during arbitration. No disputant wants to disclose his or her business or trade secrets during litigation, especially when it involves intellectual property related issues. Enterprises are willing to pick arbitra-

102. *Id.*

103. *See generally*, WIPO Expert Determination Rules, available at <http://www.wipo.int/amc/en/expert-determination/rules/index.html>.

104. CAA, *supra* note 11, at art. 31.

105. Provisions Concerning Investments, *supra* note 95.

106. *Id.*

107. CAA, *supra* note 11, at arts. 61 & 49.

tion to resolve disputes since the protection of a trade secret is a first priority for enterprises. Taiwan promulgated the *Trade Secret Act* in 1996,¹⁰⁸ and China also had similar laws to protect trade secrets such as the *Anti-Unfair Competition Law*.¹⁰⁹ For the protection of a trade secret, it means information which should be related to a formula, practice, process, design, instrument and pattern.¹¹⁰ Also, trade secrets should meet these three requirements: 1) not generally known by the public, 2) having actual or potential value, and 3) maintained a secret by reasoned efforts.¹¹¹ Additionally, the reputation of an enterprise is another main priority to be protected. Any information submitted to a court about an enterprise will be disclosed during trial. This attention may bring a lot of adverse effects on the reputation of an enterprise. For an enterprise, many disputes are merely temporary, but its reputation is established over time and should be protected. On the other hand, arbitration keeps information secret during the whole process unless the disputing parties agree to disclose the content during arbitration. Keeping the process of arbitration private is an explicit regulation by the government.¹¹² Currently, business competition is drastic. It is often not very prudent to file a suit in court for enterprises that want to maintain privacy for issue related information. Disclosure rules in litigation protect some evidence in special criminal matters, but as a rule, disclose all other information presented to the court.¹¹³ This limitation may allow parties to immediately lose their reputation among their competitors. Thus, when disputes involve complicated technological issues, any wise disputant should take advantage of the confidentiality benefits of arbitration.

The fifth advantage is justice for disputants. Since disputing parties often come from different countries, it is easy to misunderstand the laws and the role of courts due to language barriers, unfamiliar rules and jurisdictional issues. Contrary to deciphering this complicated system, arbitration allows for neutrality in the choice of applicable law. An arbitration process can be adjusted for different necessities, such as having an agreement for the applicable law, languages to be used and the location. This feature of arbitration allows more choice to the participants than the traditional legal systems, which can only use a local law, local language and local jurisdiction.

The sixth advantage is that arbitration decisions are easier to execute than court decrees. Whether or not a court has domestic jurisdiction over an international dispute is a serious problem when disputants file a suit in China. In order to make foreign courts validate and execute a verdict, there should be a multilateral treaty

108. TRADE SECRET ACT, available at http://www.tipo.gov.tw/en/AllInOne_Show.aspx?guid=e29608b9-7b13-4d2a-a8d4-efeb77b8fe48&lang=en-us&path=1487.

109. ANTI UNFAIR COMPETITION LAW OF THE PEOPLE'S REPUBLIC OF CHINA, available at <http://en.chinacourt.org/public/detail.php?id=3306>.

110. ROBERT P. MERGES ET AL., INTELLECTUAL PROPERTY IN THE NEW TECHNOLOGICAL AGE 30 (4th ed. 2003); see also Uniform Trade Secret Act, available at <http://nsi.org/Library/Espionage/usta.htm> (last visited Oct. 21, 2009).

111. MERGES, *supra* note 110, at 31.

112. CAA, *supra* note 11, at art. 40.

113. Provisions of the Supreme People's Court on Evidence in Civil Procedures, art. 17 (effective Dec. 16, 2008).

between the countries involved or between a country and a larger contracting entity such as the European Union; for China, many of these treaties do not already exist. However, there are several international treaties which validate and execute arbitration awards, such as The Geneva Protocol on Arbitration Clauses of 1923, the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927, the 1958 New York Convention or any trade treaty between two countries. Disputants only need to follow an arbitration process that they agree on and it can save a lot of time and money rather than filing suits in different countries. China undoubtedly is a hot spot for international business transactions, such as joint ventures, venture capital firms, strategic alliances, mergers and acquisitions, offset agreements and mechanism of corporations. Each of these business transactions will involve the intellectual property issues of different countries. For example, Biotech Startup, Inc. ("B.S.") wants to sue Roach, who infringed on its patent, although there is a joint venture agreement between them.¹¹⁴ Roach did not get any approval from B.S. to manufacture its drug using B.S.'s patent process in Uganda, Malaysia, China, and Peru.¹¹⁵ Roach is selling the drug worldwide.¹¹⁶ If B.S. wants to solve this dispute using litigation, it will be faced with lots of problems even before the case actually goes to court.¹¹⁷ Even if B.S. wins the case, how to execute the verdict in different countries will be another problem.¹¹⁸ However, with arbitration it is clear that a decision can be more easily agreed upon, and be easier to execute.

The seventh advantage is that arbitration saves more money than litigation. Although litigation fees in China are really low (\$30 to \$100), attorney fees will cost at least \$50,000, especially for international business cases.¹¹⁹ Besides attorney fees, disputants still need to spend money on other things, such as notarizing documents or gathering evidence. After litigation, it is difficult to say whether disputants will make or save any money over the subject matter at issue. An arbitration fee, on the other hand, is an all-inclusive one-time payment.¹²⁰ For example, if the amount of the claim is RMB 1,000,000 Yuan or less, it will be charged 3.5% of the claimed amount and the minimum is RMB 10,000 Yuan. Therefore, arbitration is a much more economical way to resolve a dispute because it can not only save disputants time, but also money.

114. Julia A. Martin, *Arbitrating in the Alps Rather Than Litigating in Los Angeles: The Advantages of International Intellectual Property-Specific Alternative Dispute Resolution*, 49 STAN. L. REV. 917, 917-19 (1997).

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. Yang Jing Ho, Effective, Just and Economic – Analyzing the Value of Arbitration, available at <http://fzj.baiyin.cn/Article/ShowArticle.asp?ArticleID=81>.

120. See CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION FEE SCHEDULE, available at http://www.sccietac.org/cietac/en/content/index.jsp?board_id=5 (Amount of claim (RMB): 1,000,000 Yuan or less will be charged 3.5% of the claimed amount and the minimum is 10,000 Yuan. RMB from 1,000,000 Yuan to 5,000,000 Yuan will be charged 35,000 Yuan plus 2.5% of the amount above 1,000,000 Yuan. RMB from 5,000,000 Yuan to 10,000,000 Yuan will be charged 135,000 Yuan plus 1.5% of the amount above 5,000,000 Yuan. RMB from 10,000,000 Yuan to 50,000,000 Yuan will be charged 210,000 Yuan plus 1% of the amount above 10,000,000 Yuan. RMB 50,000,000 Yuan or more will be charged 610,000 Yuan plus 0.5% of the amount above 50,000,000 Yuan).

The eighth and final advantage is the initiation of harmony between disputants. It is difficult for disputants to interact harmoniously during litigation. This is because in order to win the case parties must provide evidence to the court which will likely hurt each other's public reputations. On the other hand, arbitration is able to deal with each case in a peaceful way, such as picking the location for arbitration and finding arbitrators, all which is supplied through the agreement of the disputing parties. Solving disputes through arbitration will allow disputing parties to preserve their business relationships, and it is also a more suitable practice for Asian culture than litigation. This is because litigation will leave a "residue of hard feeling[s]" between the parties.¹²¹

Some scholars disagree that arbitration is quicker than the standard process in China. From their perspective, most of the arbitrators are not in full-time positions, and they do not have the administrative right to investigate. The arbitrators' decision can only rely on evidence the disputing parties provided. The relevance and the credibility of this evidence are sometimes questionable. Therefore, some people believe that the process of arbitration will take longer than litigation because of such unqualified administrators. There is no doubt that the arbitration process has its weaknesses, but no law or regulation can be perfect. Generally speaking, arbitration still might be a first choice for most enterprises because of previously mentioned advantages. These advantages will save disputants more time and money than is typically spent on litigation, especially for Taiwanese businesses. China, being a socialist country under the rule of law, has a completely different construction of its legal system than Taiwan. In addition, political issues make it impossible for Taiwanese businesses to apply Taiwan's domestic law as substantive law when transacting with Chinese enterprises. As mentioned previously, arbitration has a lot of advantages and provides the best solution for Taiwanese businesses to solve disputes. In addition, the China International Economic and Trade Arbitration Commission ("CIETAC") will be working to help participants involved in arbitration.¹²² In this way, Taiwanese businesses can not only avoid the litigation system of China, but they can also keep from creating any more political tension due to business related controversies between Taiwan and China.

There are numerous types of intellectual property-related businesses, and as a result, the characteristics and the scope of intellectual property rights are broader than that of general property. It is difficult for the laws to keep up with the development of new types of disputes over intellectual property rights. When Chinese courts deal with disputes over intellectual property rights, especially involving international cases, they have the right to choose the applicable law, but often the compensation might not be satisfactory to the parties involved. In other words, the traditional compensation in litigation is a monetary award or the return of the voucher benefit; this is not enough for industrialists who want to own and control their monopoly right in intellectual property products. The reason that this article

121. Martin, *supra* note 114, at 935.

122. See generally CHINA INTERNATIONAL ECONOMIC AND TRADE ARBITRATION COMMISSION, available at <http://www.sccietac.org/cietac/en/index.jsp>.

supports the arbitration system rather than litigation is because arbitration is based on the equity of law and an “amiable compositeur”¹²³ which permit the arbitrators to decide the dispute according to the legal principles they believe to be just, without being limited to any particular national law. Through arbitration, disputants have more methods to resolve disputes. Arbitrators not only can apply the substantive law chosen by the parties, but also can utilize equitable law, business customs and non-legal principles to efficiently execute the arbitration to the satisfaction of the disputing parties. The amiable compositeur is established to complement the shortcomings of laws or regulations. Arbitrators can make a decision by justice not only by outdated laws.

V. CONCLUSION

There is no question that China is an attractive place for international enterprises to invest. However, the legal system in China is still growing and adapting to its current culture. Arbitration has a lot of advantages to offer international businesses when they have business-related disputes in China. This article emphasizes the advantages of arbitration and points out why arbitration is the best solution for foreign businesses, especially for the Taiwanese.

Due to the special political situation between Taiwan and China, it is impossible for any Taiwanese business to use their own law of choice and to apply Taiwan’s domestic law as the substantive law controlling disputes with China. Therefore, arbitration plays an important role to deal with business disputes between Taiwan and China. Article 1 of the CAA illustrates the impartiality and promptness with which arbitration can resolve economic disputes.¹²⁴ This is good news for foreign enterprises. Without a doubt, the current arbitration law rises to international arbitration standards. Specialty arbitration commissions are equipped to deal with disputes in a prompt, flexible, and confidential way to make sure that disputants have access to justice through the execution of an arbitration award. During this process, both disputants can maintain their good business relationship by not having the opportunity to destroy each other’s public reputations. In accord with the international trend, China has worked to establish an effective arbitration system. Though the legal protection is not perfect, it is a huge step in China. This makes Taiwanese and foreign businesses more willing to apply arbitration rather than litigation because of the important advantages of arbitration.

123. BLACK’S LAW DICTIONARY 93 (8th ed. 2004). Also termed “amiable compositor,” means an unbiased third party, often a head of state or high government official, who suggests a solution that disputing countries might accept of their own volition.

124. CAA, *supra* note 11, at art. 1.